BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company, and	)	WC Docket No. **02-306**
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in California	)	

REPLY AFFIDAVIT OF RICHARD L. SCHOLL

REGARDING COST ISSUES

TABLE OF CONTENTS

I, RICHARD L. SCHOLL, being of lawful age, and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION AND OUALIFICATIONS

1. My name is Richard L. Scholl. My business address is 1 Stowe Court, Menlo Park, California 94025. I am an independent consultant for Pacific Bell Telephone Company ("Pacific"), a subsidiary of SBC Communications, Inc. ("SBC"). I am the same Richard Scholl who filed an Initial Affidavit on September 20,2002.

PURPOSE OF AFFIDAVIT

2. The purpose of this affidavit is to respond to issues raised by commenters to this application. Specifically, I will repudiate AT&T's claims that Pacific's nonrecurring UNE charges inappropriately include recumng costs, that Pacific's rates for switching feature UNEs are not cost-based, and that loop costs are incurred on a "voice grade equivalent" basis. In addition, I will rebut XO's claim that Pacific's DS-1 and **DS-3** loop UNE rates are not TELRIC-based.

PACIFIC'S NONRECURRING CHARGES DO NOT VIOLATE THE FCC'S RULES REGARDING INCLUSION OF RECURRING COSTS

3. AT&T claims that **the** nonrecurring UNE charges adopted by the CPUC as TELRIC-based include recurring costs, in violation of the FCC's rules (47 C.F.R. §51.507(d)). Specifically, Ms. Murray refers to the CPUC's decision D. 98-12-079 that adopted nonrecurring costs for Pacific to support that claim.' **A** review of the discussion referenced by AT&T, the CPUC's subsequent decisions, and the FCC's rules reveals that

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1 Declaration of Terry L. Murray, on behalf of AT&T Corp. ¶ 6, attached to AT&T Comments, *Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,* WC *02-306* (Oct. **9,2002)** ("Murray **Decl.").**

AT&T's claim has no merit, and repeats claims previously made and rejected by the CPUC.

4. Specifically, the referenced CPUC decision indicates:

> AT&T/MCI and the balance of the non ILEC parties offer that there are essentially two types of costs that should be excluded from nonrecurring cost studies. The first type, as described above, is associated with secondary investments and *are* captured in the nonrecurring cost studies of Pacific and GTEC via various forms of loadings such as head-count loadings. The second category of costs represent activities associated with field work such as running jumpers and reconnecting drops.'

5. In its decision, the CPUC addressed each of the areas identified by AT&T and others as possible areas of double counting, where costs previously identified as recurring costs had been included as non-recurring costs. These costs *are* primarily the "second category" described, where an activity is capitalized in the recurring cost studies, and then separately identified and captured as a nonrecurring activity. In its adopted nonrecurring costs, the CPUC included only costs of activities not capitalized in the recurring cost studies.[3] In responding to the same issues raised in applications for rehearing, the CPUC rejected all claims of double counting of recurring costs in the nonrecurring cost studies.[4]

6. AT&T's present claim appears to center on the alleged wrongful inclusion of the type of costs associated with secondary investments. As AT&T acknowledges, the CPUC, after its thorough review of Pacific's cost studies, found that those costs should **be** included in the adopted nonrecurring costs. In its discussion (cited by Ms. Murray), the CPUC stated:

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2 **CPUC Decision No.** *98-12-079* **("D.** *98-12-079")* **at** 50–51 **(App.** *C,* **Tab** *45).*

3 Id. **at** *66.*

4 **CPUC Decision No.** *99-06-060* **("D.** *99-06-060")* **at** *25-27* **(App. C, Tab 50).**

> AT&T/MCI's argument leads to *an* understatement of nonrecumng costs because head-count loadings would be excluded altogether and without exception, even in the event such costs have not been captured in the recurring cost studies that have been adopted to date. Likewise, nonrecumng costs for such activities as field **work** would also be excluded even though *some* forms of non capitalized costs are not captured by the recurring TSLRIC or TELRIC studies that have been adopted. Just as it is necessary to exclude double counted costs, it is also necessary to prevent underrecovery of reasonable costs that conform to our CCPs. We are well aware of the FCC's August 8, 1996 First Report & Order that prohibited the ILECs from recovering recurring costs in NRCs, but that requirement has been stayed by the Eighth Circuit. Should the Supreme Court reverse the Eighth Circuit's stay on pricing provisions of the First Report and Order, we will direct Pacific and GTEC to remove head count loadings from their nonrecumng cost studies.[5]

7. The CPUC then proceeded to review the level of secondary investments it believed appropriate for the nonrecurring TELRIC costs. In that review, the CPUC reduced Pacific's proposed secondary investments by 50%.[6] It used that reduced level **of** secondary investments in determining the non-recurring costs for UNEs it adopted for pacific.'

8. Subsequently, following the Supreme Court's decision affirming the FCC's authority to specifiy TELRIC rules, the CPUC adopted nonrecurring UNE charges based upon its adopted nonrecurring costs and determined that those costs satisfied the requirements of the Telecommunications Act.[8] In the process, the CPUC implicitly rejected the removal of the costs of secondary investments from the nonrecurring costs.

9. Although there is no specific discussion by the CPUC of its rejection (in D. 99-11-050) of the removal of costs associated with secondary investments from the nonrecurring UNE

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5 **D. 98-12-079 at 53.**

6 Id. at 58.

7 **Id., Ordering Paragraph 1, and Appendix A.**

8 **CPUC Decision** No 99-11-050 ("D. **99-11-050") at 269, Ordering Paragraph 2.**

costs, a simple review of the FCC's rules and the costs included in the nonrecurring UNE charges clearly demonstrates that there is no violation of the FCC's rules.

10. At issue here is whether or not nonrecurring costs of UNEs may include any costs associated with "secondary investment" items, such as installation trucks and administrative space occupied by installation technicians, to reflect the use of such investment to install specific UNEs. In its discussion supporting 47 C.F.R. §51.507(d) in its Local Competition Order, the FCC defined recurring costs and generally described its objective in prohibiting such recurring costs from being recovered through nonrecurring charges.'

11. In that discussion, the FCC concluded "as a general rule, that incumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred."" It went on to define a recurring cost as "one incurred periodically over time."" The FCC gave as an example of recurring costs "maintenance expenses relating to the local loop."[12] The FCC's stated reason for prohibiting recovery of recurring costs through nonrecurring charges was "[w]e find that, in practice, the present value of the recurring costs cannot be calculated with sufficient accuracy to warrant up-front recovery of these costs."[13]

12. The FCC found that imposing nonrecurring charges for recurring costs "may be excessive, reflecting costs that may (1) not actually occur; (2) **be** incurred later than predicted; **(3)** not **be** incurred for as long as predicted; (4) be incurred at a level that is

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9 **First** Report **and** Order, ***Implementation of the Local Competition Provisions in the Telecommunications Act of*** *1996,* 11 FCC Rcd **15499 ¶¶ 743 - 747 (1996)** ("Local Comuetition **Order"**).

10 **Id., 7743.**

11 Id., ¶ 745.

12 **Id.**

13 Id., ¶ 746.

lower than predicted; (5) be incurred less frequently than predicted; and *(6)* be discounted to the present using a cost of capital that is too low."[14]

13. Clearly, the FCC's concern was that some ongoing future cost of a UNE not be captured and expressed as an up-front cost. The types of costs at issue here are not such ongoing costs of providing a UNE. Rather, they are the costs associated with the use of installation trucks, and the administrative space, furniture and computers (if any) used by installation personnel while they are involved in the installation of a UNE.

14. These costs do not fit the definition of recurring costs given by the FCC. Neither are they consistent with any of the examples given by the FCC. Nor do they suffer from any of the uncertainties cited by the FCC as reasons for prohibiting cost recovery through nonrecurring charges. The costs at issue are the costs of the one-time event of using a capitalized item (e.g., a truck) while installing a UNE, not costs of ongoing events. These costs occur only during the installation of the UNE, they occur only once for any UNE, and they are not discounted to the present. In fact, these installation events and their associated costs generally occur *prior* to any billing of nonrecurring charges.

15. A review of Pacific's nonrecurring cost study process reveals that the "headcount loadings" challenged by AT&T are not impermissibly capturing ongoing costs as an up-front cost. Rather, the headcount loading process of capturing the cost of the one-time use of a secondary investment item for installing a UNE is the only reasonable way to comply with the FCC's requirement that costs be recovered "in a manner that reflects the way they are incurred."[15]

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14 Id., ¶ 747.

15 Id., ¶ 743.

16. In Pacific's nonrecurring cost studies, only that portion of the annual cost of a capitalized item (e.g., an installation truck, or the administrative space occupied by installation technicians) proportionate with its use during the year to install a single unit of a UNE was captured as the nonrecumng cost of the UNE.[16] The following example illustrates how Pacific's nonrecurring UNE cost study captured those costs.

17. Assume in this example that there is a pool of installation trucks used by installation technicians who install loop UNEs. A truck is in use whenever a technician is "on the job." Assume that those technicians charge a total of 20,000 productive hours annually. Also, assume that the identified time spent by a technician installing a loop UNE is 15 minutes (.25 hours). In this example, the total annual capital cost of the installation trucks would be divided by 80,000 (20,000 hours divided by .25 hours) to reflect the proportionate use of the trucks for installing one loop UNE.[17]

18. **As** the use of the installation trucks, administrative space, furniture and computers **by** installation personnel occur at the time of installation of a UNE, it would be inappropriate, and violate the FCC's rules, to recover those costs through any rate or charge other than the nonrecurring charge associated with the installation of the UNE. Therefore, the CPUC appropriately included these costs in its adopted nonrecurring UNE charges.

PACIFIC INCURS TELRIC COSTS OF PROVIDING VERTICAL. FEATURES

19. AT&T claims that "Vertical features are generally provided by using hardware and software features that are already built into the switch. The cost for most of this functionality is included in the up-front price that ILECs pay for switches. Pacific does

[16] *See,* e.g., D. 98-12-079 at 50, n. 34

[17] D. 98-12-079 at 52.

not incur any incremental switch-related cost to provide an additional feature to its customers, other than perhaps a cost to 'activate' that feature for the customer. (This activation cost is normally recovered through non-recurring charges.)""

20. AT&T misrepresents how switch vertical feature costs are caused. While the *capability* of a switch to provide vertical features is included in the hardware and software that is "built into the switch," the costs of actually using those vertical features, like usage, *are* incurred only as calls using those features are made. Thus, the cost of a vertical feature (as opposed to the cost of the capability of providing features) is a usage sensitive cost that is incurred each and every time the feature is used. This is identical to the manner in which costs of switch usage are identified. The capability of a switch to support usage is included in the hardware and software that is "built into the switch", but the costs of actually providing the usage are incurred as calls *are* placed. AT&T's argument is identical to claiming that there are no costs of usage as the cost of the functionality is included in the up-front price paid for the switch. AT&T is essentially arguing that all investment capital costs are incurred when the investment is made, and should not be recovered through subsequent rates for using the investment. Such a position, if applied to usage, should be instantly recognized as unpersuasive.

21. Furthermore, AT&T has repeatedly raised and lost this issue before the CPUC. In several instances, AT&T has requested that the CPUC reverse its decision with respect to ordering TELRIC-based rates for individual vertical switch features." Each time, the CPUC has rejected AT&T's position. It is clear, therefore, that the CPUC has fully scrutinized AT&T's claim and found it unpersuasive.

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18 Murray Decl. ¶ 9.

19 **CPUC** Decision No D. 01-05-092 ("D. 01-05-092") ¶ II.A.2.(b) **(App.** C, Tab **72);** CPUC Decision No. D. 00-08-011 ("D. 00-08-011") ¶ **3.5.3 (App.** C, Tab ***64).***

22. In addition, AT&T claims that "More fundamentally, Pacific does not impute to itself any costs associated with "managing" or "billing" its vertical features."" It cites Ms. Murray's declaration as the source of that claim."

23. Reviewing Ms. Murray's affidavit, however, reveals no such claim that Pacific does not include such managing or billing costs in providing its retail vertical features. Ms. Murray likely made no such claim because the claim is false. In Pacific's UNE TELRIC studies, Pacific included only wholesale costs,[22] including the switching capital and maintenance costs associated with using the switch to provide the vertical feature UNEs. The vertical feature UNE TELRICs also included costs of billing inquiries and the costs of product support for those UNEs. In Pacific's retail TSLRIC studies (studies of the costs of providing services) presented to the CPUC in the same ***OANAD*** proceeding, Pacific identified retail billing inquiry costs and product support costs **for** the various services it provides, including vertical features.[23] Costs of each retail vertical feature identified include billing inquiry and product management costs, as well as the switching capital and maintenance costs associated with using the switch to provide the vertical feature. Accordingly, there can be no doubt that AT&T's assertions are false.

VOICE GRADE EQUIVALENTS DO NOT REFLECT COST CAUSATION

24. AT&T implicitly criticizes the CPUC's continued reliance upon cost causation as a basis for determining TELRICs and TELRIC-based rates. AT&T argues:

"to compute per-line loop costs, it is critical to allocate these costs properly to high capacity loops on a per line basis that is consistent with the way those costs

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20 AT&T Comments at 28.

21 Id.

22 CPUC Decision No 98-02-106 ("D. 98-02-106") at 21 (App. C, Tab 30).

23 Cost study submitted for and approved in CPUC Decision No. 96-08-021 ("D. 96-08-021"), OANAD TSLRIC studies Tab **4** at 2 (Raw Data), Filed January 31, 1996.

are allocated to voicegrade lines. In this regard, it is common practice to count DS-I and DS-3 lines as voice-grade equivalents ('VGE'), where one DS-1 line is counted as 24 voice-grade lines, because each DS-1 line has the same capacity as 24 copper voice lines, and one DS-3 is counted as 672 voice-grade lines, because each DS-3 line has the same capacity as 672 copper voice lines."[24]

25. AT&T's position of course requires the abandonment of cost causation as a principle for determining loop UNE TELRICs. The costs of loops, including the amount of support structure required (e.g., conduit, poles, trenches) is independent of whatever service is carried by the loop. Those costs may vary based upon the number of pairs or fiber strands in a cable (either copper or fiber), but they do not **vary** with changes in the services provided on the cables. Thus, for determining UNE TELRICs it is appropriate to determine average costs per working copper pair or per lit fiber strand when including support structure costs per working loop. For determining UNE TELRICs it is then simply a matter of determining the average number of working pairs or lit fiber strands used by any particular UNE. The use of voice-grade equivalents, as proposed by AT&T, is unnecessary, and would significantly misrepresent any TELRICs determined using such a calculation.

26. This is yet another example of AT&T's attempt to relitigate an issue that the CPUC has already considered. For instance, in the interim pricing phase of OANAD, the CPUC concluded that "the VGE method would have the opposite effect of allocating the higher costs of a copper-based network to users of fiber-based special access services, potentially violating the TELRIC methodology."[25] In addition, in the same decision, the

[24] AT&T Comments at 17-18.

[25] CPUC Decision No. 02-05-042 **("D.02-05-042")** at *26* **(App. *C*,** Tab **77)**

CPUC indicated that they were "troubled by the notion that it is acceptable to overestimate the number of copper lines in the model simply because they are more expensive."[26] Clearly, the CPUC recognized that the VGE method, proposed by AT&T, overstates the number of lines and is therefore, inappropriate.

PACIFIC'S TELRIC STUDIES ARE NOT NEEDLESSLY COMPLEX

27. Ms. Murray describes Pacific's TELIUC studies as being "uniquely complex."[27] It appears that she intends that statement as a criticism. In fact, the greater accuracy and precision of Pacific's adopted TELRIC costs compared with *those* derived using an investment factor approach such as that of AT&T's HAI model is to a large extent the direct result of that complexity of Pacific's TELRIC studies. The complexity of Pacific's TELRIC studies is generally due to the CPUC's (and Pacific's) earlier recognition that "the investment factor approach is inconsistent with TSLRIC Principle No. 4 in the Consensus Document, which provides that 'any function necessary to produce a service must have an associated cost', and that 'the associated cost necessary to offer a service should be included in a TSLRIC analysis.' (App. C, p. 3) To us, these principles dictate that to the extent that an LEC has the data necessary to assign maintenance expenses with precision to the service for which such expenses were incurred, the LEC should do so."[28]

28. Ms. Murray also alleges that Pacific never produced its mainframe expense model.[29] However, during the period of CPUC review of Pacific's OANAD cost studies, parties (including AT&T) were able to visit and review Pacific's mainframe expense model. CLECs also attended presentations of the model structure and logic. Many of the

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26 Id.
27 Murray Decl. ¶ 10, fn. 4.
28 D. 95-12-016 at 10.
29 Murray Decl. ¶ 10, fn. 4.

voluminous data request responses I referenced in my initial affidavit addressed that model.

29. Ms Murray adds that "[I]n more recent proceedings, Pacific has been unable or unwilling to produce a functional copy of its expense modeling and has been unable to demonstrate if or how hundreds of millions of dollars in non-recurring expenses were supposedly removed from its recurring expense study."[30] After the acquisition of Pacific Telesis (Pacific's parent company) by SBC, support for Pacific's OANAD expense model ceased. **As** a result, it is no longer available for new investigations. However, the demonstration of the removal of nonrecurring expenses from the recurring cost UNE TELRIC study was demonstrated in the ***OANAD*** proceeding, and described by the CPUC.[31] Thus, **Ms.** Murray's claims **are** unfounded.

DS-1 AND DS-3 UNE RATES ARE TELRIC-BASED

30. XO concludes that "Yet, SBC Pacific's DS1 UNE loop prices are *60%-100%* ***more than*** the level of DS1 UNE loop prices charged by SBC's Ameritech operating companies, and SBC Pacific's DS3 UNE loop price is ***more than three times*** the DS3 UNE **loop** price charged by SBC's SWBT unit in **Texas.** These disparities are so large ***on their face*** that no one could seriously contend that SBC Pacific's DS1 and DS3 UNE loop prices are TELRIC-compliant."[32] However, neither XO nor any other intervenor puts forward one scintilla of evidence that the CPUC violated TELRIC principles when it set DS1 and DS3 rates. Rather, they simply cherry-pick rates from across the nation (some of which

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30 *Id.*

31 D. 98-12-079 **at 52.**

32 Comments of **XO** California, Inc. **at** 6, ***Application*** *by* ***SBC Communications,*** *Inc.,* ***Pacific Bell Telephone Company, and Southwestern Bell Communications Services,*** *Inc.* ***for Provision*** *of* ***In-Region. InterLATA Services*** *in* ***California***, WC 02-306 **(Oct.** 9,2002) ("XO's Comments'').

haven't even been approved as TELRIC compliant by the FCC) that are lower than the current California rates.

31. In fact, as I described in my initial affidavit, the CPUC thoroughly reviewed, modified and subsequently adopted TELRIC costs for Pacific's DS-1 loop and entrance facility and DS-3 entrance facility UNEs. The CPUC subsequently adopted UNE prices based on those thoroughly reviewed and adopted TELRIC studies.[33]

32. XO further indicates that "the CPUC specifically determined 'that the costs of this [DS3] UNE were ***never examined*** in the prior OANAD proceeding using a forward-looking, TELRIC analysis.' ... SBC Pacific's claim that the CPUC carefully scrutinized and set a TELRIC-compliant DS3 UNE loop rate is therefore clearly false."[34]

33. In the CPUC's OANAD proceeding, Pacific provided a cost study workpaper that pointed out that the design of the DS-3 loop UNE (then called the "DS3 Subscriber Access Line Basic Network Function") and the design of the DS-3 Entrance Facility UNE (then called the "DS3 Access Connection Basic Network Function") were identical." Subsequently, the CPUC thoroughly reviewed Pacific's identified DS-3 Entrance Facility UNE TELRIC study which was derived from that workpaper. The CPUC revised Pacific's DS-3 Entrance Facility UNE TELRIC study,[36] and adopted the revised DS-3 Entrance Facility UNE TELRIC." The CPUC subsequently adopted a DS-3 Entrance Facility UNE TELRIC-based price based upon that adopted TELRIC,[38] and determined that the price adopted was in compliance with the requirements of the

33 D. **99-11-050 at 269, Ordering paragraph 1, and Appendix A at 1.**

34 **XO's Comments at 6.**

35 **Cost study submitted for and approved in D. 96-08-021, OANAD TSLRIC studies, Dedicated Services DS-3 at 5, (PBON 012393) Filed January 31, 1996, reissued March 29, 1996.**

36 D. **98-02-106, Compliance Reference Document at 7.**

37 **See Resolution T-16204 (App. D, Tab 104).**

38 D. **99-11-050, Appendix A at 1.**

Telecommunications Act (e.g., that it was based on forward-looking TELRIC costs).[39] In the process of its review of the DS-3 Entrance Facility UNE TELRIC, the CPUC implicitly conducted the same review of the DS-3 loop UNE TELRIC *because the DS-3 Entrance Facility UNE and the DS-3 Loop UNE were modeled identically,* as previously demonstrated by Pacific. Anyone who claims that the CPUC never conducted that review is mistaken.

CONCLUSION

34 Intervenors' allegations regarding Pacific's costs are unfounded. The inclusion of costs associated with the use of supplementary investments (e.g., installation trucks) for installing UNEs in Pacific's adopted nonrecurring charges does not violate the FCC's prohibition of recovering recurring costs through nonrecumng charges.

35 Additionally, Pacific's rates for switching feature UNEs reflect the costs of using a switch to provide the feature in a manner similar to usage costs reflecting the costs of using a switch to provide usage. AT&T's argument that all investment capital costs are incurred when the investment is made and should not be recovered through subsequent rates for using the investment, are unpersuasive, and should he rejected.

36. The TELRIC costs of Loop UNEs are not incurred on a "voice grade equivalent" basis. Rather, such costs are incurred based on the unbundled network element itself (e.g., a copper pair in a cable), not by some possible combination of services that might use that UNE. Using voice grade equivalents for determining UNE costs would remove any relationship to cost causation.

37. The CPUC reviewed Pacific's DS-1 loop UNE TELRIC, and found it to comply with the TELRIC principles. Pacific's **DS-3** loop UNE was modeled identically to the DS-3

[39] **Id. at 269, Ordering Paragraph 1**

entrance facility UNE. Consequently, when the CPUC determined the DS-3 entrance facility UNE TELRIC cost, and found it to comply with the TELRIC principles, implicitly the CPUC also determined the TELRIC cost of the identical DS-3 loop. Pacific's DS-1 loop UNE and DS-3 loop UNE rates are based upon those respective adopted TELRIC costs.

38. Pacific's UNE TELRIC studies are not needlessly complex. The degree of detail and precision in Pacific's TELRIC costs reflects the **level** of detail in the cost studies. **A** less detailed study would have produced a **less** detailed result. Consequently, complaints regarding the studies that the CPUC used to set TELRIC rates should **be** rejected as unpersuasive.

39. This concludes my affidavit.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

I declare under penalty of perjury that the foregoing is true and correct

Executed on October 28, 2002.

Richard L. Scholl

Richard L. Scholl

Subscribed and sworn to before me this 28th day of October, 2002.

Heather C. Scholl

Notary Public

HEATHER C. SCHOLL
Comm. # 1323359
NOTARY PUBLIC - CALIFORNIA
San Mateo County
My Comm. Expires Oct. 2, 2005

Before the
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REPLY AFFIDAVIT OF COLLEEN L. SHANNON

REGARDING WHOLESALE POLICY, PAYPHONE AND PAGING ISSUES

TABLE OF CONTENTS

Schedule of Attachments

Attachment A	**Accessible Letter regarding availability** of intraLATA **Toll Arrangement**
Attachment B	**Optional Amendment** for IntraLATA **Interexchange Capabilities**

I, COLLEEN L. SHANNON, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

1. My name is Colleen L. Shannon. I am the same Colleen L. Shannon that previously filed an affidavit regarding wholesale policy issues in this docket on September 20, 2002.[1] This affidavit replies to certain comments regarding obtaining an interconnection agreement with Pacific, access to network elements, local transport, and reciprocal compensation. I also address comments regarding payphone and paging issues.

OBTAINING AN INTERCONNECTION AGREEMENT WITH PACIFIC

2. Vycera Communications, Inc. ("Vycera") contends that Pacific Bell is "deliberately and wrongfully refusing to provide interconnection to Vycera on a nondiscriminatory basis, in that it will not permit Vycera to opt in to any part of the interconnection agreement arbitrated by AT&T with Pacific Bell in California ("AT&T Agreement") unless Vycera first agrees to a lengthy amendment to the AT&T Agreement." Vycera Comments at 2-3. Vycera, however, does not fairly present the narrow nature of the parties' actual dispute – which is currently pending before the California Public Utilities Commission ("CPUC") in an arbitration proceeding.

[1] See Affidavit of Colleen L. Shannon attached to Avvlication by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services. Inc. for Provision of In-Region, InterLATA Services in California, WC Docket No. *02-306* (FCC filed Sept. 20, 2002), (App. A, Tab 20)

3. In its ISP Reciprocal Compensation Order: the Federal Communications Commission ("FCC") concluded that Most Favored Nations ("MFNs") into rates associated with the exchange and termination of ISP-bound calls (including any legitimately related terms) were cut-off as of the date such Order was published in the Federal Register (May 15, 2001). Because all reciprocal compensation terms are legitimately related to the rates associated with the exchange and termination of ISP-bound calls, it is Pacific's position that a requesting CLEC may not adopt reciprocal compensation provisions in an existing agreement, but must instead negotiate rates, terms and conditions for reciprocal compensation.

4. Nevertheless, as explained at paragraph 104 of my opening affidavit, if Pacific has voluntarily negotiated terms for reciprocal compensation with another carrier entirely after the effective date of the ISP Reciprocal Compensation Order, and such provisions reflect Pacific's reciprocal compensation position at the time the CLEC's adoption request is received, Pacific will offer the same (or similar) provisions to a similarly situated carrier, or will negotiate further at the carrier's request.

5. Vycera filed an advice letter with the CPUC requesting to adopt the AT&T Agreement in its entirety pursuant to CPUC Resolution ALJ-181, Rule 7 (App. D, Tab 197). Consistent with its policies, Pacific contacted Vycera, advising that if Vycera wished to adopt the AT&T Agreement, Vycera would need to exempt the reciprocal compensation provisions from the adoption of the agreement. Further, Pacific offered a negotiated amendment to replace the exempted reciprocal compensation provisions. Vycera, however, disagreed

[2] See Order on Remand and **Report** and Order, Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic, 16 FCC Rcd 91 l, ¶ 82 (2001) ("ISP Reciprocal Compensation Order"), remanded, WorldCom v. FCC, 288 F.3d 429 (D.C. Ci **2002)** (remanding but not vacating Order).

with Pacific's position that the reciprocal compensation provisions from the AT&T Agreement are no longer available for adoption. Based upon that disagreement, Pacific timely objected to Vycera's adoption request by filing an application for arbitration with the CPUC. That arbitration is currently pending before the CPUC, with an expedited schedule expected to result in a CPUC decision by January 9,2003. Accordingly, this issue need not and should not be addressed in this 271 proceeding.

6. As previously noted, Pacific has offered to replace the exempted reciprocal compensation provisions of the AT&T Agreement with an amendment containing negotiated rates, terms and conditions for reciprocal compensation. Pacific has offered both SBC's generic reciprocal compensation amendment or, alternatively, ***an amendment containing the AT&T reciprocal compensation terms and rates*** on a "negotiated basis to Vycera (even though, in effect, no negotiations would be required). Notably, a comparison of the provisions that would be added to the underlying agreement via the later proposed amendment and the exempted AT&T reciprocal compensation provisions reveals that, other than substituting "Vycera" for "AT&T," the substantive language of such provisions is identical.[3] Moreover, at least five (5) CLECs that have opted into the AT&T Agreement without the reciprocal compensation provisions have incorporated the reciprocal compensation terms from the AT&T Agreement as negotiated provisions via the proposed amendment. Of those, four (4) have been approved by the CPUC and one (1) is pending approval before the CPUC.

[3] In the Amendment containing the AT&T terms and conditions, Pacific also noted (by using an asterisk) that certain of the AT&T provisions in the proposed amendment were "Non-Voluntary Terms" (i.e., arbitrated provisions as ordered by the CPUC in D. 00-08-011 (App. C, Tab 64)). Pacific also proposed its standard amendment reservation of rights language to be included in the amendment to ensure it was clear that Pacific was not waiving any rights in entering into the Amendment (including, among other things, its right to adopt at a future date, the ISP terminating compensation plan and rates from the ISP Reciprocal Compensation Order), but instead was fully reserving its rights.

7. Accordingly, it is unclear exactly what Vycera seeks to accomplish through its refusal to accept the "negotiated" amendment. Moreover, as previously noted, the issue is pending before the CPUC and will be quickly resolved.

CHECKLIST ITEM 2 – ACCESS TO NETWORK ELEMENTS

8. AT&T Corp. ("AT&T") asserts that Pacific has not firmly committed to provide new combinations on a non-discriminatory basis. See AT&T Comments at 30-36. AT&T is wrong.

9. As I explained in paragraph 85 and footnote 54 of my opening affidavit, the AT&T Agreement commits Pacific to combine unbundled network elements on AT&T's behalf when requested to do so. Accordingly, Pacific has provided and continues to provide such combinations. Notably, AT&T carefully avoids alleging that Pacific has actually refused such combinations – in fact conceding just the opposite. See AT&T Comments at 32 (noting Pacific's actual practice, which has been "to provide access to new combinations on the same terms as it provided access to 'pre-existing' combinations."); AT&T Fettig Declaration, ¶ 5 ("Although Pacific appealed the CPUC's decision to federal district court (see 47 U.S.C. § 252(e)), Pacific provided 'new' combinations to AT&T on the same terms as 'existing' combinations, pursuant to its interconnection agreement.").

10. As I further explained in footnote **54** of my opening affidavit, following the issuance of the Supreme Court's decision in Verizon Communications Inc. **v.** FCC, 122 **S.** Ct. **1646** (May 13, 2002) ("Verizon"), and pursuant to Section 8.3 of the General Terms and Conditions of the AT&T Agreement, which requires **an** expedited (30-day) process for change of law notices, Pacific provided to AT&T and other CLECs that had MFNd into

the AT&T Agreement, notice of its request to engage the CLECs in renegotiations of certain provisions of the AT&T Agreement to reflect the Verizon decision. However, I further unequivocally stated that ***"Pacific has provided technically feasible new combinations under the Agreement to date and will continue to do so as it previously has unless and until the previously mentioned renegotiations result in negotiated changes to the Agreement clarifying Pacific's combining obligations or, alternatively, until the issue is arbitrated or the FCC issues further clarifications."*** Shannon Affidavit, ¶ ***85*** n.54. Again, AT&T carefully avoids any allegation that Pacific is not in fact complying with that commitment.

11. Accordingly, AT&T cannot reasonably contend that its existing interconnection agreement does not contain a legally binding obligation for Pacific to provide UNE combinations in satisfaction of the FCC's rules. No matter the construction given to those rules in light of Verizon – the subject of the parties' current negotiations over their prospective rights and obligations – the AT&T Agreement as it has been implemented clearly satisfies the requirements. More importantly, AT&T does not – and indeed cannot – allege that Pacific has denied such combinations. Pacific has continued to provide new combinations following the issuance of Verizon *and* subsequent to providing its notice to AT&T seeking renegotiations in light of Verizon.

12. Consequently, AT&T's comments are reduced to a complaint that it disagrees with Pacific's interpretation of Verizon – and therefore disagrees with Pacific's *negotiating* ***position*** in connection with the change of law notice Pacific provided to AT&T. Pacific recognizes AT&T's right to disagree. But, as set forth above, that disagreement is entirely beside the point. Pacific has not implemented and will not unilaterally

implement its interpretation of Verizon in connection with the AT&T Agreement until the negotiation and (if necessary) arbitration process runs its course: or until this Commission issues further clarifications. In the meantime, Pacific will continue to provide UNE combinations as it previously has – which AT&T concedes satisfies even its interpretation of the obligation.'

CHECKLIST ITEM 5 – LOCAL TRANSPORT

13. In *ex partes* filed on October 18, and October 25, 2002, Telscape Communications, Inc. ("Telscape") alleges that Pacific fails to satisfy checklist item 5 because it has failed to

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[4] Pacific and AT&T are currently pursuing informal negotiations on this issue and are exchanging information. In the event the negotiations reach an impasse, Pacific would likely be the party required to file for arbitration/dispute resolution before the CPUC. (In light of Pacific's commitment to continue to provide new combinations as set forth above, there would appear to be little incentive for AT&T to file for arbitration/dispute resolution.) Although no firm date has been established, and although Pacific reserves the right to file for such arbitration/dispute resolution at any time as necessary to preserve its legal rights, in light of ongoing negotiations, Pacific does not currently anticipate that any such proceeding would he initiated until January 2003. Although there is no set timeframe within which the CPUC would render a decision in such a proceeding, it would most likely take at least five to six months.

[5] The majority of AT&T's comments on the combination issue, as well as the majority of the Fettig Declaration, are, in actuality, legal argument regarding the meaning of Verizon and the scope of this Commission's combining rules. I do not purport in this affidavit to take any legal position with respect to those issues. I feel compelled, however, to point out two overriding fallacies in AT&T's arguments. First, AT&T selectively cites language from Verizon in an attempt to discredit Pacific's negotiating position. AT&T's citations, however, conveniently ignore language from Verizon that directly supports Pacific's negotiating position. For instance, AT&T fails to note that the Court stated that: "At the outset, it is well to repeat that the duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents. ***An obligation on the part of an incumbent to combine elements for an entrant under rules 315(c) and (d) only arises when the entrant is unable to do the job itself.***" Verizon, 122 S. Ct. at 1685 (emphasis added). Likewise, AT&T does not quote the Court's summary on this issue, where it wrote: "In sum, what we have are rules that say an incumbent shall, for payment, 'perform the functions necessary,' 47 CFR §§ 51.315(c) and (d) (1997), to combine network elements to put a competing carrier on an equal footing with the incumbent ***when the requesting carrier is unable to combine,*** First Report and Order P294, when it would not place the incumbent at a disadvantage in operating its own network, and when it would not place other competing carriers at a competitive disadvantage, 47 CFR § 5 1.315(c)(2) (1997)." Id. at 1687 (emphasis added). Thus, Pacific respectfully disagrees with AT&T's vitriolic assertion that Pacific's position is "preposterous." Second, AT&T argues that a federal district court in California has already agreed with AT&T's position regarding Verizon. See AT&T Comments at 32 & n.92. However, even a cursory reading of the referenced decision belies that argument. See AT&T Comm. of Cal. Inc. v. Pacific Bell Tele. Co., Case No. C01-02517CW (N.D. Cal. Aug. 6,2002). The District Court did not provide any interpretation of Verizon. The District Court merely rejected Pacific's argument that the combination requirements in the AT&T Agreement were broader than the FCC's combination rules – holding that the obligations under the agreement were coextensive with the federal rules. But that begs the question of what those rules actually require in light of Verizon – a question that the District Court most assuredly did not address. In any event, as previously noted, this is an issue that will he negotiated and, if necessary, arbitrated in the normal course. It need not be addressed in the context of this 271 proceeding.

provide shared transport for intraLATA toll calls. Telscape did not raise these allegations in either the state 271 proceeding or in opening comments in this proceeding. Nonetheless, Telscape's claims are incorrect and inconsistent with CPUC findings.

14. As discussed in paragraphs **94** and 96 of my opening affidavit, Pacific provides for the use of its shared transport for a CLEC's intraLATA toll traffic in the manner ordered by the CPUC. The CPUC addressed this very issue in an AT&T arbitration, and the relevant language of the AT&T Agreement was ordered and approved by the CPUC.[6] Indeed, in the October 9,2002 Order that Telscape cites, this Commission endorsed the CPUC arbitration decision that resulted in the relevant language in the AT&T Agreement.' Additionally, the CPUC addressed shared transport issues in an MCI arbitration proceeding.' Telscape elected to MFN into the Interconnection Agreement between Pacific Bell and MCImetro Access Transmission Services, LLC ("MCIm") (along with a negotiated reciprocal compensation amendment).[9] Notably, in rejecting arguments on this issue in the state **271** proceedings, the CPUC specifically pointed to the language of both the AT&T and MCIm Agreements in satisfaction of Pacific's UNE requirements."

15. Even though Pacific's interconnection agreements contain language consistent with the CPUC's determination regarding shared transport, as endorsed by this Commission, on October **17,** 2002, Pacific voluntarily offered an additional alternative to CLECs pursuant to Accessible Letter CLECC02-291 in order to remove any potential issue stemming

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6 See D.00-08-011 at 8 (App. C, Tab 64).

7 **Order, SBC Communications, Inc. Auuarent Liability for Forfeiture, File No. EB-01-IH-0030, FCC 02-282, ¶ 15 n.45 (rel. Oct. 9,2002).**

8 **See Pacific/MCIm Interconnection Agreement, App.** UNE, § 4.4.3

9 **Pacific Application, App. B, Tab 6.**

10 **See D.02-09-050 at 164-165 (Cal. PUC Sept. 19, 2002), attached to Ex Parte Letter from Geoffrey M. Klineberg on behalf of SBC to Marlene Dortch, FCC, WC Docket No. 02-306 (Sept. 30,2002).**

from the Commission's October 9 Order. See Attachment A.[11] This alternative offers California CLECs an amendment to their Interconnection Agreement that allows another way for the CLEC to route intraLATA toll calls via Pacific's shared transport. See Attachment B.

CHECKLIST ITEM 13 – RECIPROCAL COMPENSATION

16. Pac-West Telcomm, Inc. ("Pac-West"), RCN Telecom Services, Inc. ("RCN'), and U.S. Telepacific Corp. ("Telepacific") claim that Pacific "fails to provide reciprocal compensation consistent with Commission regulations" because Pacific "has refused to compensate RCN and Pac-West at tandem switching rates." Pac-West, RCN & Telepacific Comments at 29-30. That argument should **be** summarily rejected.

17. Both the RCN and Pac-West interconnection agreements include reciprocal compensation terms and conditions, including terms and conditions for tandem switching." The agreements entitle Pac-West or RCN to tandem switching compensation only where they perform a tandem switching *function*, which neither of them do. Moreover, the tandem-switching agreement language at issue was negotiated by Pac-West, **and** RCN voluntarily MFNd in to it. Because that language was negotiated – and was therefore entered into "without regard to the standards set forth in subsections (b) and (c) of section 251," 47 U.S.C. § 252(a)(1) – Pac-West and RCN's reliance on

[11] At least one CLEC **has** already signed the amendment, which was filed with the CPUC on October 28, 2002.

[12] See Pacific/Pac-West Interconnection Agreement, § 5.3.3; Pacific/RCN Interconnection Agreement, § 5.3.3.

intervening law is beside the point." Finally, even if Pac-West and RCN were entitled to tandem switching rates for traffic terminated to certain of its customers, it certainly is not entitled to such rates for all traffic – for instance, for customers located at or near its premises.

18. Notably, despite the fact that Pac-West has been operating under its agreement since June 29, 1999, and the RCN Agreement, which is a Rule 7 MFN into the Pac-West Agreement, has been effective since June 17,2000, neither commentor raised these allegations in the state 271 proceedings nor did they file any complaints with the CPUC with respect to those agreements. Indeed, Pac-West did not raise this issue until the parties began negotiations of a new interconnection agreement. For the successor agreement with Pacific, Pac-West is proposing new language **for** tandem switching compensation, a clear indication that even Pac-West recognizes that it is not entitled to tandem switching compensation in its existing agreement. Pacific filed its Application for Arbitration with the CPUC of the successor agreement on March 29,2002, and tandem switching compensation is one of the issues being addressed in this arbitration.[14]

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[13] Pac-West and RCN rely upon the recent decision of the Wireline Competition Bureau in support of their position. See Memorandum Opinion and Order, Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al., CC Docket Nos. 00-218, et al., DA 02-1731, ¶ 309 (rel. July 17, 2002). I note, however, that neither party has invoked the change of law provisions of their existing agreement in reliance on that decision. In addition, apart from the fact that the parties voluntarily negotiated the relevant language, the foregoing arbitration decision is subject to reconsideration and review by the FCC and is not binding upon the CPUC, particularly in light of the fact that the CPUC has previously reached a contrary conclusion, and that conclusion has been upheld by the United States District Court for the Northern District of California. See MCI WorldCom Communications. Inc. v. Pacific Bell Tel. Co., No. C-00-2171VRW, 2002 U.S. Dist LEXIS 4789, at *14 (N.D. Cal. Mar. 15,2002) ("[T]he geographic scope test 'focuses on the area currently being served by the competing carrier, not that area the competing carrier may in the future serve."').

[14] Application of Pacific Bell Telephone Company (U-1001-C) for Arbitration with Pac-West Telecomm, Inc. (U5266-C) Pursuant to Section 252(b) of the Telecommunications Act of 1996, A.02-03-059 (filed Apr. 18, 2002).

19. In any event, because this issue was never raised in the state 271 proceeding, and because it is now pending before the CPUC in an arbitration, this Commission need not address this contract dispute in the context of this 271 proceeding.

20. Separately, Mpower Communications *Corp*. ("Mpower"), as part of its complaints regarding billing (addressed separately in the Joint Reply Affidavit of Michael E. Flynn and Ginger L. Henry (Reply App., Tab 5)), asserts that "SBC finance and collections personnel have begun to withhold millions of dollars. . ." Mpower comments at 7. Mpower conveniently ignores, however, that it undisputedly owes Pacific many times the amount that Pacific undisputedly owes Mpower. Mpower also neglects to inform the Commission that it has continually failed to comply with the billing dispute provisions of the parties' interconnection agreement. As I stated in my opening affidavit, reciprocal compensation amounts may sometimes be held pending resolution of such disputes.

21. In sum, Pacific strongly disagrees with Mpower's characterization of this issue, which is being addressed at the senior management or higher level within the parties' respective organizations. Notably, as a first step in resolving these issues, subsequent to Mpower's filing, Pacific agreed to pay, and has in fact paid, Mpower the undisputed historical reciprocal compensation payments due to Mpower, with the understanding that Mpower will likewise release all undisputed funds owed to Pacific and will escrow all disputed funds. In any event, because the parties' interconnection agreement provides clear dispute resolution procedures and obligations (including the availability of dispute resolution proceedings before an independent arbitrator, the CPUC or the courts), this section 271 proceeding certainly is not the proper forum to address or resolve such issues.

PAYPHONE ISSUES

22. Mpower and Ernest Communications, Inc. ("Ernest"), have generally alleged that Pacific is providing "illegal discounts" and "rebates" off of Pacific's retail customer owned pay telephone ("COPT") access line rates and, therefore, fails the non-discrimination standards of checklist item 2 and/or creates a "price squeeze." Mpower Comments at 8-10; Ernest Comments at 1-4. These commentors did not raise these allegations in the state **271** proceedings.

23. Mpower, however, has recently filed a Complaint with the CPUC based on this issue – claiming violations of the California Public Utilities Code. See Mpower Comments at 9. The allegations – that Pacific has **engaged** in an unlawful rebate scheme and below-cost predatory pricing – are based upon state-law. Pacific intends to demonstrate to the CPUC that the Mpower Complaint should be dismissed, and, given the CPUC's past rigorous enforcement activities, there is no reason to believe the CPUC will not fully and timely address the Complaint. Accordingly, this issue should not and need not be addressed in conjunction with this 271 proceeding. Nevertheless, I want to briefly address these commentors' allegations.

24. Specifically, the commentors allege that Pacific is providing unlawful discounts and rebates off of state-tariffed retail rates. That is not the case. Instead, the allegations appear to arise based upon Pacific's compensation arrangements with a third-party "aggregator" and the incentive arrangements that the aggregator has independently entered into with Payphone Service Providers ("PSPs"). Like numerous other telecommunications providers – including in all likelihood CLECs such as Mpower and Ernest – Pacific contracts with aggregators who, in turn, have entered into relationships

with PSPs. The aggregators generally encourage PSPs to purchase COPT access lines from and to deliver certain revenue generating traffic (e.g., 0+/0- intraLATA non-sent paid billed calls; intraLATA calls directed to a contracted platform provider; and Ic IntraLATA sent paid billed calls) to a particular telecommunications carrier(s). The PSP purchases **the** COPT access line from Pacific's retail tariffs and routes the revenue generating traffic to Pacific's network. Pacific has provided all such services at its tariffed rates.

25. In return for the delivery of such revenue generating traffic, Pacific and other telecommunications carriers enter into compensation arrangements with aggregators. Although Pacific does not direct the operations or offerings of the aggregators, in some instances the aggregator may offer incentives to the PSPs – including lump sum payments – in order to increase the desired traffic on behalf of its contracted carriers. These aggregator-provided incentives appear to be the basis for the commentors' complaints. Among other fallacies in the commentors' allegations, they completely fail to take into consideration the additional revenue generated from the PSP traffic *(as* noted above) – the key component of the compensation paid to the aggregators.

26. In any event, as previously noted, although Pacific strongly disagrees with the commentors' assertions on this issue, it has nothing to do with checklist compliance and – according to Mpower's own CPUC complaint – involves allegations of state law, which are pending before the CPUC. Accordingly, the issue need not and should not be addressed in this proceeding.

PAGING ISSUES

27. Paging Systems, Inc. **("PSI")** and Touch Tel Corporation ("Touch Tel") contend that "Pacific has continued to illegally charge the Carriers for both delivering traffic and associated facilities since 1996" and has failed to reimburse alleged overcharges. PSI and Touch Tel Comments at 2-4. Once again, these commentors raise issues in this proceeding that were not raised in the state 271 proceedings and therefore should not be addressed here. Moreover, they fail to fully present the relevant facts and context of the issue – which I will briefly address below.

28. The Commission is certainly familiar with the issues surrounding LEC charges for facilities and traffic delivered to wireless providers.[15] The commentors' selective factual and legal recitation, however, fails to recognize that the Commission has specifically found that ILECs may charge paging carriers for facilities utilized for various services (e.g., transit traffic and wide area calling services). Moreover, they fail to recognize the uncertainty created by paging camers (and those who may claim to be paging camers but who do not offer paging telecommunications service **as** defined by the Telecommunications Act of 1996) ordering facilities without entering into

[15] See Memorandum Opinion and Order, TSR Wireless, LLC, et al., Complainants, v. U S . West Communications. Inc.. et al., Defendants, 15 FCC Rcd 11**166** (2000) ("TSR Wireless Order"), aff'd Owest Corn. v. FCC, **252** F.3d **462** (D.C. Cir. **2001)** ("Qwest"). In the TSR Wireless Order, the Commission determined that ILECs may not impose upon paging camers charges for facilities used to deliver ILEC-originated traffic that originates and terminates within the same Major Trading Area ("MTA"). Id. ¶ 18. The Commission also determined that a Section **252** interconnection agreement is not required for a paging carrier to obtain the benefits of that decision. Id. ¶ **29.** However, **the** Commission further determined that ILECs may charge paging carriers for "wide area calling" and similar services, as well **as** for transit services. Id. ¶ 31. In a subsequent decision, the Commission reaffirmed its finding that ILECs may charge paging carriers for transit services. &Memorandum Opinion and Order, Texcom, Inc.. d/b/a Answer Indiana. Complainant. v. Bell Atlantic Corn.. d/b/a Verizon Communications, Defendant, 16 FCC Rcd **21493 (2001)** ("Texcom Order"). Moreover, the Commission recently reaffirmed that ILECs may charge paging carriers for "area wide calling" and similar services, as well as transit services. &Memorandum Opinion and Order, Mountain Communications, Inc.. Complainant, v. Owest Communications International, Inc., Defendant, **17** FCC Rcd 2091, ¶¶ **8-12 (2002)** ("Mountain Communications Order"), review denied, 17 FCC Rcd **15135 (2002).** Thus, the Commission has made clear that the particular usage of interconnection facilities determines the extent to which they are subject to charge.

interconnection agreements. Those are precisely the issues that remain open between Pacific and PSI and Touch Tel.

29. It is true that Pacific has in the past presented bills, and continues to present bills, to PSI and Touch Tel for what may be paging telecommunications service traffic. Such bills may include charges for interconnection facilities used to terminate SBC originated traffic. But that is solely because the parties have not yet reached agreement on which facilities are not subject to charge, if any. **As** a practical matter, Pacific must bill for all the facilities in order to preserve its rights pending resolution of the open issues.

30. Moreover, the commentors fail to disclose that the parties have been involved in negotiations to resolve both the amount of any refund which may be due the commentors for past bills and to address Pacific's charges going forward. The commentors further fail to recognize that their cooperation is required in order to resolve those issues. For instance, to date, the commentors have rejected Pacific's request to provide supporting documentation it deems necessary to investigate the services and amounts upon which the claim is based. **As** things currently stand, Pacific is left to ***guess*** at not only the total amounts in controversy, but also what portions relate to SBC originated interconnection traffic that may entitle commentors to a refund. Finally, the commentors fail to mention that Pacific has offered to enter into interconnection agreement negotiations.

31. Perhaps most importantly, as the commentors appear to concede, PSI and Touch Tel Comments at 4 n.8, Pacific has not taken any adverse collection or disconnect actions against them pending the resolution of this issue. Indeed, Pacific advised the commentors in 2000 – during the pendency of the TSR Wireless Order appeal – that "pending appeal Pacific Bell will comply with the FCC's ruling and will not take any

adverse action against a paging provider that fails *to* pay the portion of its bill attributable *to* charges for facilities used *to* deliver traffic originated on Pacific Bell's network." See PSI and Touch Tel Comments, Exh. 1B at 1 (Letter from Pamela Gillette, Pacific Bell, to Jeff Smith, Touch Tel (Aug. 24,2000)). Following the appeal, Pacific has continued to follow this policy – and the commentors make no allegations *to* the contrary.

32. Accordingly, it is clear that this fact-intensive issue cannot **and** should not be addressed in the context of this proceeding. This issue has been pending for years – yet the commentors have not previously raised it in the state **271** proceeding. Pacific will continue to **work** with **the** commentors to resolve the underlying issue.

33. This concludes my affidavit.

STATE OF **TEXAS**)
)
COUNTY OF **DALLAS**)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2002.

Colleen L. Shannon
Colleen L. Shannon

Subscribed and **sworn** to before **me** this 29th **day of** October ,*2002*.

Notary Public

ELIZABETH ANN SIMPSON NOTARY PUBLIC STATE OF TEXAS EXP. RES 1/11/03